

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

JOHN BOTTICELLI

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -4809

Decision No. CU 5106

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOHN BOTTICELLI and is based upon the asserted loss of 6,000 shares of stock of the Trans-Cuba Oil Company. Claimant has been a national of the United States since his naturalization on December 29, 1942.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

On the basis of evidence of record, the Commission finds that claimant acquired 6,000 shares of Trans-Cuba Oil Company stock; that 800 shares of this stock was acquired prior to November 23, 1959, and 5,200 shares were acquired in June and October 1961.

In our decision entitled the Claim of D. R. Wimberly (Claim No. CU-3417 which we incorporate herein by reference), we held that the properties owned or controlled by the Company were nationalized or otherwise taken by the Government of Cuba on November 23, 1959, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$0.1198.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Wimberly decision; that he was an American national at the requisite times; that he has been the owner of 800 shares of stock in the Trans-Cuba Oil Company since prior to November 23, 1959; and that he suffered a loss in the amount of \$95.84 within the meaning of title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from November 23, 1959, the date of loss, to the date on which provisions are made for the settlement thereof. (See Wimberly, supra.)

This leaves for determination the portion of the claim asserted by claimant for loss of 5,200 shares of stock of the Trans-Cuba Oil Company which he acquired in 1961.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on November 23, 1959. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons

firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No.

W-2571, 1968 FCSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), is limited to the actual consideration paid for these shares.

In Commission letters of January 16, 1969, July 18, 1969, and December 19, 1969, claimant was advised as to the type of evidence proper for submission to establish this portion of the claim under the Act, including transaction slips from his broker or any available evidence to establish the cost of the 5,200 shares of stock of the subject corporation acquired subsequent to loss. On February 2, 1970, claimant was invited to submit any evidence available to him within thirty days from that date. However, no evidence has since been submitted.


Accordingly, with respect to the claim for loss of 5,200 shares of stock of Trans-Cuba Oil Company, the Commission finds that claimant has not met the burden of proof in that he has failed to establish the amount paid for such shares, as provided under Section 507 of the Act (supra). Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

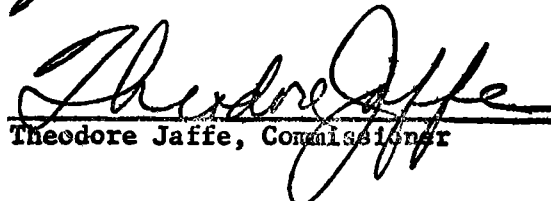
CERTIFICATION OF LOSS

The Commission certifies that JOHN BOTTICELLI suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety-five Dollars and Eighty-four Cents (\$95.84) with interest at 6% per annum from November 23, 1959 to the date of settlement.

Entered at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUN 30 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 1.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)